

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MALCOLM DIO POTEPA, : No. 3:12cv1071
Petitioner :
v. : (Judge Munley)
: (Magistrate Judge Smyser) FILED
SCRANTON
: AUG 17 2012
MARY SABOL, Warden, :
Respondent :
.....

ORDER

PER: M.A.S./
DEPUTY CLERK

AND NOW, to wit, this 17th day of August 2012, we have before us for disposition Magistrate Judge J. Andrew Smyser's report and recommendation. Magistrate Judge Smyser recommends that the respondent be ordered to treat Macolm Dio Potepa's petition for a writ of habeas corpus as a request for release under 8 C.F.R. § 241.13 and to respond to that request in accordance with the regulation. Magistrate Judge Smyser further recommends that the petition be denied without prejudice to the right of the petitioner to file another petition at an appropriate future point if he can show that his removal is not reasonably foreseeable. No objections to the report and recommendation have been filed, and the time for such filing has passed. Therefore, in deciding whether to adopt the report and recommendation, we must determine if a review of the record evidences plain error or manifest injustice. FED. R. Civ. P. 72(b) 1983 Advisory Committee Notes ("When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record to accept the recommendation"); see also 28 U.S.C. § 636(b)(1); Sullivan v. Cuyler, 723 F.2d 1077, 1085 (3d Cir. 1983).

After a careful review, we find neither a clear error on the face of the record nor a manifest injustice, and therefore, we shall adopt the report

and recommendation. It is hereby **ORDERED** as follows:

- 1) The magistrate judge's report and recommendation (Doc. 5) is **ADOPTED**;
- 2) The respondent is directed to treat the petition (Doc. 1) as a request for release under 8 C.F.R. § 241.13 and to respond to that request in accordance with the regulation;
- 3) The petition is **DENIED** without prejudice to the right of the petitioner to file another petition at an appropriate future point if he can show that his removal is not reasonably foreseeable;
- 4) We decline to issue a certificate of appealability. See 28 U.S.C. § 2253(c) and and 3d Cir. LAR. 22. and
- 5) The Clerk of Court is directed to close this case.

BY THE COURT:

JUDGE JAMES M. MUNLEY
United States District Court